



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF Z-S- INC

DATE: JUNE 13, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a software consulting company, seeks to temporarily employ the Beneficiary as a "Sr. Data Warehouse Engineer" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the proffered position does not qualify as a specialty occupation.

On appeal, the Petitioner asserts that the Director made an erroneous conclusion, but does not provide further explanation. The Petitioner chose not to submit a brief or additional evidence in support of the appeal.

Upon *de novo* review, we will dismiss the appeal.

**I. LEGAL FRAMEWORK**

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. PROFFERED POSITION

In a letter submitted in support of the petition, the Petitioner indicated that the Beneficiary will work offsite, assigned to U-M-G-, Inc. (end-client). The Petitioner provided the following job duties for the position:

- Analyze on the Business requirement & involve in designing a new global integrated Reporting System.
- Involve in analyzing the Front End tool to manage the metadata tables.
- Help in migrating the On-prem SQL Server environment into AWS Cloud.
- Build Data Pipeline to convert the On Prem ETL Logic & load directly into Redshift.
- Design & develop processes in Hadoop.
- Coordinate with the reporting team to manage the Partition on MSTR end.
- Propose new logics to handle the business requirements.
- Design the ETL Framework in processing the files from different Partners / Customers.
- Manage the Code Deployment across the Environments.
- Create the Batch Scripts to Trigger the Informatica Jobs.
- Play major role in scheduling Batch Scripts in ControlM Scheduler to trigger Jobs in Production.
- Coordinate with team to deploy the deliverables in estimated duration.
- Work on cleaning up the metadata in Royalties / repertoire Systems.

The Petitioner further claimed that the position requires the candidate to have a minimum of a Bachelor's degree or foreign equivalent in "CS/CIS/CE/Business Administration or other related Engineering or Business field with related professional experience."

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the proffered position requires an educational background, or its equivalent, commensurate with a specialty occupation.<sup>1</sup> Further, the Petitioner has not established that it has secured definite, non-speculative specialty occupation work for the Beneficiary for the entire validity period requested.<sup>2</sup>

As recognized by the court in *Defensor*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. See *Defensor*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

Here, the record of proceedings in this case is devoid of sufficient information from the end-client. The evidence in the record indicates that the Petitioner has an agreement with a vendor, A-I-

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<sup>1</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>2</sup> Speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

(vendor), who provides services to the end-client. The documents submitted in support of this relationship, however, contain numerous discrepancies and deficiencies.

For example, the Petitioner submitted a Statement of Work (SOW) for the Beneficiary. The body of the SOW, states that the SOW “defines services to be performed for [D-S- Inc] to be delivered by [the Beneficiary].” In other words, the SOW identified a completely different client than the end client. Further, the SOW states that the term “will be three years from November 1 22 2016,” which does not provide a clear start date. However, if we assume that the start date is November 1, 2016, since both the itinerary and the offer of employment letter indicate a November 1, 2016, start date, we note that the November 1, 2016, start date is in excess of six months from the filing date of the petition on April 1, 2016, and thus not permitted under 8 C.F.R. § 214.2(h)(9)(i)(B).

In response to the Director’s request for evidence (RFE), the Petitioner submitted a new SOW, claiming that the date discrepancy was simply a typographical error. No mention was made regarding the references to another company, D-S- Inc, as being the receiver of the Beneficiary’s services. The new SOW identified the Beneficiary as the employee who would render services to the end-client, and further indicated that the end-client, not D-S- Inc, would receive the Beneficiary’s services. This updated SOW modified the start date for the Beneficiary’s services to October 1, 2016, indicating that they would continue for three years from that date. However, we note that U.S. Citizenship and Immigration Services (USCIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

The Petitioner also submitted a letter from the vendor, which claimed that the Beneficiary would work for its client pursuant to its agreement with the Petitioner. The letter from the vendor further indicated that the project would range from October 3, 2016, through December 31, 2018, in contrast to the updated SOW submitted by the Petitioner.

Notably, the record of proceedings does not contain a contractual agreement between the Petitioner and the vendor, or the vendor and the end-client. Without documentary evidence that delineates the contractual terms between the end-client and the vendor, including the duties and the requirements for the position, we are unable determine the substantive nature of the proffered position.

Consistent with *Defensor*, where the work is to be performed for entities other than the Petitioner, evidence of the client companies’ job requirements is critical. Here, both the Petitioner and the vendor indicate that the Beneficiary will be assigned to work at the end-client’s location. Under these circumstances, evidence of the work the end-client would assign to the Beneficiary and the educational requirement it imposes for the performance of that work is indispensable. However, there is no discussion or documentation in the record that outlines the nature of the project upon which the Beneficiary will allegedly be assigned. While the Petitioner submitted a letter from the end-client’s

senior director, confirming that the Beneficiary would work onsite at its offices through the Petitioner's agreement with the end-client on the development of the "[REDACTED] Project," the end-client does not specify the details of the project including its educational requirements, duties, or the timeline for completion.

Moreover, the Petitioner has not established that it has definite, non-speculative work for the Beneficiary for the entire validity period requested. Without documentary evidence from the end-client that covers the duration of the period of employment requested, we are not able to ascertain what the Beneficiary would do, where the Beneficiary would work, as well as how this would impact circumstances of his relationship with the Petitioner. Although the Petitioner provides a statement of work on its own letterhead, which indicates that the Beneficiary will work for the end-client for a three-year period beginning in October 2016, there is no documentary evidence from the end-client to corroborate this claim. Moreover, the letter from the vendor contradicts this, noting that the intended period of the Beneficiary's employment will expire in December of 2018. Although the letter indicates that this is a long term project subject to 12-month renewal terms, no documentary evidence establishing this was submitted. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, in the offer letter and the employment agreement, the Petitioner indicates that the Beneficiary will perform his duties from client locations as applicable. It does not state, as claimed on the SOW, that he will exclusively be employed at the end-client's location for the requested three-year period. This statement, coupled with the vendor's letter indicating a project duration of less than three years, suggests that the Beneficiary may ultimately be assigned to a different client during the course of his employment. A petition must be filed for non-speculative work for the Beneficiary, for the entire period requested, that existed as of the time of the petition's filing. For this additional reason, the Petitioner has not demonstrated the substantive nature of the duties the Beneficiary would perform.

Moreover, we find that the letter from the vendor, the SOW, and the Petitioner's own letters describing the duties and requirements of the proffered position are entitled to little probative weight. First, the SOWs and letter from the vendor set out general terms pursuant to which the Petitioner will provide the Beneficiary's services to the end-client. However, both of these documents contain the exact same description of duties set forth in the Petitioner's letter of support, and do not articulate with specificity what the Beneficiary would be doing on the end-client's project. Aside from the fact that they were not issued directly by the end-client, these documents do not describe in detail the specific duties, demands, level of responsibilities and requirements necessary for the proffered position. Instead, they provide vague job descriptions that do not convey the specific tasks to be performed, the complexity of such tasks, and the substantive application of knowledge involved. This is particularly relevant, since the end-client references the "[REDACTED] project, but neither the end-client nor the other parties provide any information on this project or what specific tasks will be associated with the project.

For example, the Petitioner and the vendor state that the Beneficiary's duties include "coordinate with team to deploy the deliverables in estimated duration." However, no description of the [REDACTED] project, its timeline for completion, or expected deliverables was provided. Moreover, the Petitioner claims that the Beneficiary will "help in migrating the On-prem SQL Server into AWS Cloud," "design & develop processes in Hadoop," and "create the batch Scripts to Trigger the Informatica Jobs." There is no further information of what specific tasks the Beneficiary will perform in furtherance of these overarching duties, what will be involved, or what bodies of knowledge are required to perform these duties.

That the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3;<sup>3</sup> and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

#### IV. CONCLUSION

The Petitioner has not established that it has secured work for the Beneficiary for the entire validity period requested, and that such work qualifies as a specialty occupation.

**ORDER:** The appeal is dismissed.

Cite as *Matter of Z-S- Inc*, ID# 334478 (AAO June 13, 2017)

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<sup>3</sup> We note the Petitioner's submission of paystubs, wage and tax statements, and foreign educational credentials for numerous other employees as evidence that it routinely requires a specialty degree for the proffered position. However, the Petitioner has not demonstrated that these individuals are or were employed as Sr. data warehouse engineers, nor has it provided any information regarding the requirements and duties of each of their positions. Notably, none of the individuals identified in the chart in the RFE response appear to have held the proffered position, as they hold titles such as "Salesforce Developer," "Salesforce Lead Developer," and "Salesforce Programmer Analyst." Moreover, there is no evidence that their foreign credentials have been evaluated and equated to a U.S. bachelor's degree in a specific specialty.

While a petitioner may assert that a proffered position requires a degree in a specific specialty, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Here, the Petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.